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KRSEK STAPLES, J

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EXAMINER

ART UNIT 13 PAPER NUMBER

DATE MAILED: 08/08/95

NOTIFICATION OF NON-COMPLIANCE WITH 37 CFR 1.192(c)

The Appeal Brief filed _____ is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See 1092 O.G. 33, July 12, 1988 and MPEP § 1206.

Applicant is given a TIME LIMIT of ONE MONTH from the date of this letter or any time remaining in the period under 37 CFR 1.192(a) for filing a new complete brief. If a new brief that fully complies with 37 CFR 1.192(c) is not timely submitted, the appeal will be dismissed as of the date of expiration of the period provided by 37 CFR 1.192(a). No extension of this one month time limit may be obtained under either 37 CFR 1.136(a) or (b) but the original two-month period under 37 CFR 1.192(a) for filing the brief may be extended under 37 CFR 1.136(a) up to six months from the date of the Notice of Appeal.

1. ☒ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order. (See explanation in box 8 below, if appropriate.)
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims. 37 CFR 1.192(c)(1). (See explanation in box 8 below, if appropriate.)
3. ☐ The brief does not contain a statement of the status of each amendment filed subsequent to the final rejection. 37 CFR 1.192(c)(2). (See explanation in box 8 below, if appropriate.)
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters. 37 CFR 1.192(c)(3). (See explanation in box 8 below, if appropriate.)
5. ☐ The brief does not contain a concise statement of the issues presented for review. 37 CFR 1.192(c)(4). (See explanation in box 8 below, if appropriate.)
6. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto. 37 CFR 1.192(c)(7). (See explanation in box 8 below, if appropriate.)
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal. 37 CFR 1.192(c)(6). (See explanation in box 8 below, if appropriate.)
8. ☒ Explanation in support of items 1-7 above, if appropriate:

Appeal Briefs filed on or after April 21, 1995 must contain two new headings 1. Real Party in Interest 2. Related Appeals + Interferences. See the attached O.G. Notice 1174 O.G. 91 published May 16, 1995.

[Signature]
HAZEL P. SIDBEY
PRIMARY EXAMINER

file copy

**Advance Notice of Changes to
MPEP § 1206 and § 2309**

This memorandum is to provide advance notice of changes that will be made to MPEP § 1206 and § 2309 relating, respectively, to the requirements for an appeal brief and preparation of interference papers by an examiner. These changes will appear in the next revision of the Manual. The changes will be based on the final rules relating to patent appeal and interference proceedings, which were published in the *Federal Register* on March 17, 1995 at 60 FR 14488 and in the *Official Gazette* on April 11, 1995 at 1173 Off. Gaz. Pat. Office 36. The effective date of these rule changes is April 21, 1995.

37 CFR 1.192(c) relating to the content of an appeal brief has been changed so that it does not apply to *pro se* applicants, and in that two additional items have been added. In particular, the appellant must identify in the brief, the real party in interest and any related appeals and interferences. Accordingly, examiners must review appeal briefs filed on or after April 21, 1995 for the presence of the following items under appropriate headings: (1) Real party in interest; (2) Related appeals and interferences; (3) Status of claims; (4) Status of amendments; (5) Summary of invention; (6) Issues; (7) Grouping of claims; (8) Argument; and (9) Appendix. Examiners should continue to refer to MPEP § 1206 (6th ed., Jan. 1995) for the standards for reviewing items (3) through (9). Under the revised rules, a brief filed by a *pro se* applicant should be evaluated on a case-by-case basis.

Examiners should not be unduly rigid in reviewing appeal briefs for compliance with the requirements of the rule. For example, if no amendment has been filed after final rejection, a new brief should not be required solely because the brief omits having some statement after the heading for item (4), status of amendments.

37 CFR 1.192(d) has been amended to indicate that "the appeal will stand dismissed" if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified.

Regarding the preparation of interference papers by the examiner, 37 CFR 1.609(b)(1) has been amended to require the examiner to explain why the counts define different patentable inventions if there is more than one count proposed. 37 CFR 1.609(b)(2) has been amended to require the examiner to identify the claims of any application or patent which correspond to each count and explain why each claim designated as corresponding to a count is directed to the same patentable invention as the count. 37 CFR 1.609(b)(3) has been amended to require the examiner to identify the claims in any application or patent which do not correspond to each count and to explain why each claim designated as not corresponding to any count is not directed to the same patentable invention as any count.

The above changes will take effect on April 21, 1995.

April 18, 1995

J. MICHAEL THESZ, Editor
*Manual of Patent
Examining Procedure*